

## **PRAYER AT BOCC MEETINGS**

The BOCC is considering a policy for making prayer a part of the BOCC meetings.

People already have the right to pray at our meetings during public comment. Because we have freedom of speech, people can pray during our public meetings. As a commissioner, I could also pray during my comments. Adding a public prayer to our meetings would provide some additional issues. To avoid violating the Establishment Clause of the First Amendment, the “prayer” time would have to be available to all points of view. The First Amendment does allow for limited time, place and manner restrictions---provided the restrictions are content-neutral. But it is the governmental regulations of speech (including prayer) that must be content neutral. However, the speech (including prayer) does not have to be content neutral. In fact, the permitted speech (including prayer) can be provocative, offensive, full of errors and otherwise opinionated. The governmental regulations that are put in place to regulate speech (including prayer) cannot regulate the content of the speech (including the content of the prayer). This means that any “prayer” time would have to be made available on some fair basis to persons of all religious persuasions including Muslims, Buddhists, Christians and atheists.

Some governmental units have made prayer regulations that, in an attempt to avoid offense of some religions, prescribe words that can and cannot be said in a prayer, and names of deity that can and cannot be used. But these are “content” regulations that are patent violations of the Establishment Clause.

As the Board of County Commissioners considered whether or not to have prayer at its meetings, we can certainly expect to hear complaints that church and state should be kept separate. However, this argument misstates the First Amendment requirements. Contrary to the statement by Thomas Jefferson, there is no wall of separation between church and state. There has been an inter-mixing of the two from the beginning. The question is whether and under what conditions does the “entanglement” become “excessive” and therefore unconstitutional. I believe the 1971 Lemon (US Supreme Court) case still provides the legal standard on whether the governmental action is excessive. Lemon v. Kurtzman, 403 U.S. 602 (1971).

In 1983, in March v. Chambers, 463 U.S. 783, the Court specifically upheld the practice of a State legislature to open its sessions with prayer.

While the Supreme Court has prohibited school-sponsored prayers at school events, these restrictions do not apply to public meetings of legislative bodies.